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IN THE

Supreme Court of the United States

OCTOBER TERM, 1990

MASSACHUSETTS MUTUAL LIFE INSURANCE COMPANY,
Petitioner,

v.

WILLIAM E. COLLINS,
Respondent.

On Petition for a Writ of Certiorari to the Supreme Court of Alabama

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BRIEF AMICI CURIAE FOR THE AMERICAN COUNCIL OF LIFE INSURANCE AND THE HEALTH INSURANCE ASSOCIATION OF AMERICA IN SUPPORT OF THE PETITION

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QUESTIONS PRESENTED

1. Whether a jury award of punitive damages violates the Due Process Clause of the Fourteenth Amendment where the jury rendered the award in the absence of meaningful standards governing its discretion to award those damages and where the award bears no rational relationship to the purposes of deterrence and punishment.

2. Whether a jury award of punitive damages violates the Fourteenth Amendment where the award rests entirely on a *respondeat superior* theory with no showing that the defendant participated in or had knowledge of its agent's alleged misconduct.

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BRIEF AMICI CURIAE FOR THE AMERICAN COUNCIL OF LIFE INSURANCE AND THE HEALTH INSURANCE ASSOCIATION OF AMERICA IN SUPPORT OF THE PETITION

INTERESTS OF THE AMICI [1]

The American Council of Life Insurance ("ACLI") is the largest life insurance trade association in the United States, representing the interests of 616 member life insurance companies, 435 of which hold licenses to conduct insurance business in Alabama. The ACLI's members currently hold 95 percent of the life insurance in force in legal reserve life insurance companies in the United States and 92.6 percent of such insurance in Alabama. The Health Insurance Association of America ("HIAA") represents the interests of 320 member

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[1] Counsel for both the Petitioner and the Respondent have consented to the filing of this brief. Their consents are on file with the Clerk.

companies that write over 85 percent of the health insurance written by commercial insurance companies in the United States and provide health insurance coverage to approximately 95 million Americans; approximately 230 of the HIAA's members hold licenses in Alabama.

The central issue in this case—whether and to what extent the Due Process Clause of the Fourteenth Amendment imposes limitations on a jury's discretion to award punitive damages and on the amounts of those damages —is vitally important to the members of the ACLI and HIAA. In recent years, courts have permitted juries to assess substantial punitive damages awards against insurance companies, in the absence of due process constraints, and have deferred to those awards even though they are imposed without meaningful standards and bear no rational relationship to the purposes of deterrence and punishment. These decisions, like the decision below, drastically and unpredictably enlarge the risks facing insurers, which must rely on a predictable allocation of risks and costs in providing insurance, and jeopardize their ability to offer affordable insurance. Because of their genuine interest in the constitutionality of current punitive damages law, therefore, the ACLI and the HIAA have filed numerous *amici* briefs in this Court in cases involving this issue. *See, e.g., Pacific Mutual Life Ins. Co. v. Haslip*, No. 89-1279; *Browning-Ferris Industries, Inc. v. Kelco Disposal, Inc.*, 109 S. Ct. 2909 (1989); *Bankers Life & Casualty Co. v. Crenshaw*, 486 U.S. 71 (1988); *Aetna Life Ins. Co. v. Lavoie*, 475 U.S. 813 (1986).

The ACLI and the HIAA thus file this brief to provide the Court with their unique perspectives, based on the experiences of their broad-based constituencies, on the constitutionality of punitive damages law and to offer additional arguments that underscore the importance of this Court's review.

STATEMENT

This case involves the constitutionality of an Alabama jury's assessment of a substantial punitive damages award against Petitioner, Massachusetts Mutual Life Insurance Company ("Massachusetts Mutual"), based on the allegedly fraudulent conduct of an independent contractor agent in selling a life insurance policy to a bank executive, Respondent William Collins. The Petitioner's Statement of the Case recites the essential facts and the conclusions of the courts below; the *amici* will not repeat them here.

REASONS FOR GRANTING THE WRIT

I. THIS CASE PRESENTS IMPORTANT QUESTIONS OF FEDERAL CONSTITUTIONAL LAW THAT THIS COURT SHOULD DECIDE CONCURRENTLY WITH THE SIMILAR ISSUES BEFORE THE COURT IN *PACIFIC MUTUAL LIFE INSURANCE COMPANY v. HASLIP*

This Court has recognized the importance of the constitutional issues that this case presents. In granting the writ of certiorari in *Pacific Mutual Life Ins. Co. v. Haslip*, 553 So. 2d 537 (Ala. 1989), *cert. granted*, 110 S. Ct. 1780 (1990) (No. 89-1279), the Court has agreed to hear argument concerning (1) the limits that the Due Process Clause of the Fourteenth Amendment imposes on a jury's discretion to award punitive damages and on the amounts of those awards and (2) the propriety of assessing punitive damages against an insurer, based on a *respondeat superior* theory, for the allegedly fraudulent conduct of an errant agent. This case, which presents similar issues, is no less deserving of this Court's review.

That this Court has already agreed to review these issues in *Haslip* does not obviate the need for concurrent (or even independent) review in the instant case. While the issues that these two cases present are similar, they

are by no means coextensive. Indeed, this Court can resolve the vicarious liability issue in *Haslip* without reaching the related issue in this case. In *Haslip*, the Court need only decide whether the assessment of punitive damages against an insurer based on the fraudulent conduct of a non-exclusive agent in pocketing the premiums from his sale of an insurance policy violates due process, where the agent acted unlawfully to benefit himself rather than his unknowing principal. It need not reach in *Haslip* the related question presented here: that is, whether an award of punitive damages against an insurer based on the allegedly fraudulent conduct of an agent in selling an insurance policy violates due process, where the insurer neither knew about nor ratified the conduct but apparently benefitted from it. The instant case thus presents a variant of the *respondeat superior* issue that warrants resolution, whether concurrent with or independent of *Haslip*.

Concurrent consideration of these two cases would, moreover, likely ensure the fullest resolution of *both* the vicarious liability issues *and* the punitive damages issues that these cases present. Together, these cases provide the Court with the opportunity to define more fully, based on two distinct factual settings, the parameters of vicarious liability in the context of punitive damages. Together, these cases provide the Court with an ample record to evaluate whether punitive damages law, as applied in Alabama, comports with substantive and procedural due process. And, together, these cases minimize the possibility that the Court will, for prudential reasons, once again have to defer resolution of these important due process issues.[2] The Court should, therefore, grant review.

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[2] This Court could, for example, decide in *Haslip* that due process precludes assessing punitive damages against an insurer based on the allegedly fraudulent conduct of a non-exclusive agent, where the insurer neither ratified nor benefitted from the conduct, and thus vacate the judgment on that ground alone—perhaps leaving un-

II. THIS CASE PROVIDES AN APPROPRIATE SETTING FOR THIS COURT TO DEFINE THE LIMITATIONS THAT THE DUE PROCESS CLAUSE IMPOSES ON PUNITIVE DAMAGES AWARDS OF CIVIL JURIES

This Court has recognized that the constitutionality of current punitive damages law, under the Due Process Clause of the Fourteenth Amendment, is an "important issue[] which, in an appropriate setting, must be resolved." *Aetna Life Ins. Co. v. Lavoie*, 475 U.S. 813, 828-29 (1986). This case, perhaps even more than *Haslip*, presents a compelling opportunity for this Court to dispose of this question. Massachusetts Mutual timely raised its constitutional challenge to the assessment of punitive damages in the courts below; despite its challenges, the trial court sustained the jury's assessment of punitive damages against Massachusetts Mutual even though the jury awarded those damages with virtually no guidance whatever and even though the respondent had suffered no actual harm; and the Alabama Supreme Court declined to disturb the result of the jury's exercise of standardless discretion—an award of punitive damages against an insurer, based on conduct that it did not know about or condone, that bears no rational relationship to the purposes of deterrence and punishment.

A. The Question Whether A Jury's Standardless Discretion To Award Punitive Damages Violates Due Process Warrants This Court's Review

"The idea that a jury should be given guidance in its decisionmaking is . . . hardly a novel proposition." *Gregg v. Georgia*, 428 U.S. 153, 192-193 (1976). But

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resolved the important constitutional questions that arise from a jury's standardless assessment of excessive punitive damages awards. Although the same result is possible in the instant case, concurrent consideration of these cases, at minimum, enhances the possibility that this Court will finally decide these important questions.

the present procedure for awarding punitive damages affords no intelligible standards for a jury charged with deciding whether to award punitive damages and, if so, in what amount. This case starkly reveals this constitutional deficiency.

Current punitive damages law leaves the decision to award such damages to the sole discretion of a jury that, based on a mere preponderance of the evidence, has found a civil defendant liable under a subjective standard that may range from "maliciousness" to some degree of "negligence." Exercising their "wholly standardless discretion" (*Bankers Life & Casualty Co. v. Crenshaw*, 486 U.S. 71, 88 (1988) (O'Connor, Scalia, JJ., concurring)), juries " 'may or may not make such an award' " (*Smith v. Wade*, 461 U.S. 30, 52 (1983) (citation omitted)); they make that decision "guided by little more than an admonition to do what they think is best." *Browning-Ferris Industries, Inc. v. Kelco Disposal, Inc.*, 109 S. Ct. 2909, 2923 (1989) (Brennan, Marshall, JJ., concurring). This "deep[] flaw" (*id.*) of punitive damages law subjects defendants to the whims of a jury and exposes them to punitive damages awards "frequently based upon . . . caprice and prejudice." *Smith v. Wade*, 461 U.S. at 59 (Rehnquist, J., dissenting).

Current punitive damages law likewise fails to define what amount of punitive damages the jury may fairly award. "Punitive damages are not measured against actual injury, so there is no objective standard that limits their amount." *Bankers Life & Casualty Co. v. Crenshaw*, 486 U.S. at 87 (O'Connor, Scalia, JJ., concurring). On the contrary, jury discretion over the amounts of punitive damages "is limited only by the gentle rule that they not be excessive." *Gertz v. Robert Welch, Inc.*, 418 U.S. 323, 350 (1974). Thus, "[w]ithout statutory (or at least common-law) standards for the determination of how large an award of punitive damages is appropriate in a given case, juries are left largely to themselves in making this important, and po-

tentially devastating, decision." *Browning-Ferris Industries, Inc. v. Kelco Disposal, Inc.*, 109 S. Ct. at 2923 (Brennan, Marshall, JJ., concurring). This grant of "wholly standardless discretion to determine the severity of punishment" (*Bankers Life & Casualty Co. v. Crenshaw*, 486 U.S. at 88 (O'Connor, Scalia, JJ., concurring)), results in wildly varying "windfall recoveries [that are] unpredictable and potentially substantial." *International Brotherhood of Elec. Workers v. Foust*, 442 U.S. 42, 50 (1979).

These flaws are plainly evident in this case. After finding Massachusetts Mutual liable under a liberal *respondeat superior* standard, the jury exercised its discretion to award punitive damages with little more guidance than to do what it thought was best. Told that it could award punitive damages in its discretion, the jury punished Massachusetts Mutual with an arbitrary award that bore no rational relationship to any harm caused. After all, the respondent apparently suffered no actual damages; indeed, he received the insurance that he purchased at the price he agreed to pay. The jury made this award, moreover, without instructions providing meaningful standards for determining whether, and in what amount, to award punitive damages. The absence of such guidance deprived Massachusetts Mutual of the "fundamental fairness" that the Due Process Clause requires.

B. The Excessive Punitive Damages Award In This Case Violates Substantive Due Process And Warrants This Court's Review

Under the punitive damages laws of most jurisdictions, juries can and do "award any amount of punitive damages." *Bankers Life & Casualty Co. v. Crenshaw*, 486 U.S. at 87 (O'Connor, Scalia, JJ., concurring). Reviewing courts, moreover, vary unpredictably in their willingness to adjust those awards. Constrained by the presumption that jury verdicts are correct, these courts

provide little review of excessive punitive damages awards, leaving intact awards that bear no rational relationship to the stated purposes of these damages, i.e., deterrence and punishment. This substantive due process flaw is readily apparent in this case.

The notion that reviewing courts can, consistent with due process, overturn excessive damages awards is not new. In the early part of this century, this Court began to review extra-compensatory damages awards under the Fourteenth Amendment to determine whether they were so "grossly excessive as to amount to a deprivation of property without due process of law." *Waters-Pierce Oil Co. v. Texas*, 212 U.S. 86, 111 (1909); *see also Missouri Pacific Ry. v. Tucker*, 230 U.S. 340, 351 (1913). Under the "gross excessiveness" test, the Court independently evaluated whether the awards properly served the deterrent and punitive purposes of these extra-compensatory damages. *See St. Louis, Iron Mountain & So. Ry. v. Williams*, 251 U.S. 63, 67 (1919) (justifying penalty in light of "the numberless opportunities for committing the offense, and the need for securing uniform adherence to established passenger rates"); *see also Waters-Pierce Oil Co. v. Texas*, 212 U.S. at 111; *Missouri Pacific Ry. v. Humes*, 115 U.S. 512, 523 (1885). In this manner, the Court determined whether these awards were "wholly disproportioned to the offense and obviously unreasonable." *St. Louis, Iron Mountain & So. Ry. v. Williams*, 251 U.S. at 66-67. Although the Court ultimately upheld many extra-compensatory awards under this "excessiveness" test, it did so largely because juries rendered these awards within rational legislative bounds and, accordingly, deserved deference. *See Missouri Pacific Ry. v. Humes*, 115 U.S. at 522; *St. Louis, Iron Mountain & So. Ry. v. Williams*, 251 U.S. at 66; *Waters-Pierce Oil Co. v. Texas*, 212 U.S. at 112.

The punitive damages award in this case cannot stand under these principles. This case does not involve any

legislative policy choice concerning the appropriate measure of punitive damages; it reflects only the decision of an Alabama jury to assess, in the absence of any legislative guidance, a substantial punitive damages award against Massachusetts Mutual.[3] That award, moreover, rationally serves neither the deterrent nor retributive purposes of punitive damages and thus is constitutionally excessive. It greatly exceeds an amount necessary to "deter" Massachusetts Mutual from future misconduct; indeed, Massachusetts Mutual did not even know about, much less participate in, its independent contractor agent's alleged misdeeds. Further, the award greatly exceeds an amount, if any, necessary to punish Massachusetts Mutual. Massachusetts Mutual did not "deserve" substantial punishment for the unauthorized misdeeds of its agent; it surely did not "deserve" a punishment that bore *no* relation to the respondent's actual damages. Only this Court can correct this deprivation of substantive due process.

C. Alabama's Post-Verdict Review Procedure Does Not Obviate The Importance Of This Court's Review

That the courts below purported to engage in a post-verdict review of the excessiveness of the jury's punitive damages award does not cure its constitutional defects. Indeed, like *Haslip*, this case presents yet another example of the utter failure of that procedure to ensure meaningful and substantive review of the amounts of punitive damages awards.

Post-verdict review of punitive damages under the deferential "guidelines" that the Alabama Supreme Court established in *Hammond v. City of Gadsden*, 493 So. 2d 1374, 1379 (Ala. 1986), affords neither a "hard" nor

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[3] The Alabama legislature has recently enacted a statute that places a $250,000 "cap" on punitive damages awards in certain types of cases. *See* Ala. Code § 6-11-21 (1989). It did not do so, though, until June 11, 1987, after the cause of action arose in this case.

"long" look at these awards. *See Browning-Ferris Industries, Inc. v. Kelco Disposal, Inc.*, 109 S. Ct. at 2923 (Brennan, Marshall, JJ., concurring) (reviewing courts should "look longer and harder" at the punitive damages awards of civil juries rendered in the absence of statutory guidelines). After all, even under these guidelines, the Alabama courts still must give substantial deference to the jury's award and " 'presume that the verdict [is] correct.' " *Charter Hosp. v. Weinberg*, 558 So.2d 909, 911 (Ala. 1990), quoting *Campbell v. Burns*, 512 So. 2d 1341, 1343 (Ala. 1987). Not surprisingly, there is little evidence that this post-award review in Alabama has any appreciable impact. It clearly had no effect in this case, where the court below let the $750,000 award stand under *Hammond;* it had no effect in *Haslip*, where the same court allowed a $1 million award to survive under *Hammond* (*see* 553 So. 2d at 544-45) (Maddox, Steagall, JJ., dissenting in part)); and it has had little effect in other post-*Hammond* cases in Alabama (*see, e.g., United American Ins. Co. v. Brumley*, 542 So. 2d 1231 (Ala. 1989) ($1 million punitive damages for bad faith failure to pay a claim affirmed even though compensatory damages totalled only $5,000); *State Farm Fire & Casualty Ins. Co. v. Lynn*, 516 So. 2d 1373 (Ala. 1987) ($250,000 punitive damages for insurance fraud sustained even though compensatory damages totalled only about $21,000)).

The *Hammond* guidelines thus do little, if anything, to enhance the depth of post-verdict review of constitutionally excessive punitive awards—and they do nothing to address the "constitutionally defective" jury process that produces these excessive awards. *See Charter Hosp. v. Weinberg*, 558 So.2d 909, 915-16 (Ala. 1990) (Houston, J., concurring specially). They do nothing, therefore, to minimize the need for this Court's review.

CONCLUSION

The petition for certiorari should be granted.

Respectfully submitted,

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